UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

BRETT C. KIMBERLIN Federal Correctional Institute Memphis, TN 38134, Plaintiff, v. J. MICHAEL QUINLAN, Individually and as Director of the Bureau of Prisons, UNITED STATES BUREAU OF PRISONS, 320 First Street, N.W. Washington, D.C. 20534, LOYE W. MILLER, JR., Individually, 1672 - D Beekman Place, N.W. Washington, D.C. 20009 UNITED STATES OF AMERICA, Defendants.	JURY TRIAL DEMANDED Civil Action No. 90-1549 HHG

FIRST AMENDED COMPLAINT FOR DAMAGES FOR VIOLATIONS OF CONSTITUTIONAL AND STATUTORY RIGHTS

Plaintiff Brett C. Kimberlin, by his undersigned attorneys, alleges upon knowledge with respect to himself and his own actions, and upon information and belief as to other matters, as follows:

1. This is an action seeking, *inter alia*, compensatory and punitive damages, from defendants J. Michael Quinlan, individually, and Loye Miller, individually, who, acting under color of federal law, violated plaintiff Kimberlin's constitutional rights, as guaranteed by the First and Fifth Amendments of the United States Constitution. This action further seeks statutory damages from defendants the United States Bureau of Prisons and J. Michael Quinlan, as Director of the Bureau of Prisons, arising from violations of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. § 2510 *et seq*. Finally, this action seeks compensatory damages from defendant United States under the Federal Tort Claims Act.

JURISDICTION

2. This action is brought pursuant to the Constitution of the United States; 18 U.S.C. § 2520; 28 U.S.C. § 1331; 28 U.S.C. § 1346; and 28 U.S.C. § 2671.

VENUE

3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1391(b), (e) and 1402(b).

PARTIES

4. Plaintiff Brett C. Kimberlin is a prisoner currently incarcerated at the federal correctional institute ("FCI") in Memphis, Tennessee. At the time that the events described herein took place, plaintiff was incarcerated in the FCI in El Reno, Oklahoma. Kimberlin is a resident of Tennessee.

5. Defendant J. Michael Quinlan is the Director of the Federal Bureau of Prisons, located in Washington, D.C. He served in that capacity as well at all times relevant to this Complaint. In his capacity as Director of the Bureau of Prisons, Quinlan is responsible for the management and functioning of the Bureau of Prisons and the federal prison system.

6. Defendant Loye W. Miller, Jr. was the Director of Public Affairs at the Department of Justice at all times relevant to this Complaint. Miller is no longer employed by the Department of Justice. He resides in Washington, D.C.

7. Defendants Quinlan and Miller (hereinafter sometimes referred to as the "individual defendants") acted by agreement in conspiracy and in concert with each other and other federal officials, under color of federal law.

FACTS COMMON TO ALL COUNTS

8. Shortly before the 1988 presidential election, and continuing thereafter, each of the defendants participated in and furthered a scheme to deprive Kimberlin of his First Amendment right to speak with the press and his Fifth Amendment right to due process. Pursuant to this scheme, the individual defendants herein ordered or intentionally caused and facilitated Kimberlin to be placed repeatedly into detention for the purpose of stifling his attempts to communicate with the press about a matter of public interest and for the purpose of retaliating against Kimberlin for such attempts.

9. In furtherance of this scheme, certain defendants have violated Kimberlin's statutory right to unmonitored telephone calls and have repeatedly subjected Kimberlin to tortious assault, battery and false imprisonment.

THE FIRST DETENTION, ON NOVEMBER 4, 1988

10. Dan Quayle, Senator from Indiana, was the vice-presidential candidate on the ticket with George Bush in the 1988 presidential election. Shortly prior to November 4, 1988, a small number of news reporters initiated contacts with Kimberlin after learning that Kimberlin believed, and had stated, that he had sold marijuana on several occasions in 1972 to Dan Quayle.

11. As the weekend before the 1988 presidential election approached, various news media representatives appeared to gain interest in publishing Kimberlin's statements. On or

about Friday, November 4, 1988, a camera crew from NBC National News arrived at the El Reno FCI to conduct an interview with Kimberlin. This interview had been approved by El Reno FCI officials.

12. Miller did not learn of this interview until after it had occurred. (Exhibit C, p. 1). Although Quinlan has recently stated that he "personally facilitated" the NBC interview (Exhibit D), he implied otherwise in an earlier letter responding to inquiries from Senator Joseph Biden:

> The procedure for media interviews of this type is to arrange a mutually agreeable time and date which will not disrupt institutional security or incur additional staffing costs; *the policy leaves the decision of when to schedule timely interviews to the discretion of local officials*.

(Exhibit 1 to Exhibit A) (emphasis added).

13. Although not able to speak with Kimberlin, the local newspaper, the *El Reno Tribune*, published a story that day reporting, for the first time in any publication, the existence of Kimberlin's claims and the fact that NBC National News had conducted an interview of him. On or around that afternoon of November 4, 1988, numerous news organizations around the country learned of Kimberlin's claims and that NBC National News had conducted the interview.

14. On that afternoon of November 4, 1988, the El Reno FCI was deluged with requests to interview Kimberlin. Roger Benefiel, the Executive Assistant to the El Reno FCI Warden, scheduled a group interview for 7:00 that evening at which any interested member of the press would be permitted to speak with Kimberlin. Benefiel scheduled this group interview for the purpose of accommodating the news reporters' requests in a way that would be efficient and convenient for the local prison officials. Several news reporters were admitted into the El Reno FCI to participate in the interview.

15. Defendants Miller and Quinlan learned of this scheduled group interview after the local officials had approved it, but before it was to take place. The individual defendants viewed the potential occurrence of such an interview as unacceptable because such a news conference would make possible wide publication of Kimberlin's statements. Accordingly, Quinlan ordered the interview cancelled.

16. Kimberlin's potential contacts with the press were of great concern to defendants, since these officials had a stake in the success of the Bush-Quayle campaign. If the campaign were not successful, the individual defendants would have lost their powerful, prestigious and financially lucrative positions. Defendants' fears were reinforced by the expressed concern of members of Senator Quayle's campaign staff. Mark Goodin, the Deputy Press Secretary to the Quayle campaign, for example, closely monitored Kimberlin's activities and briefed top officials of the campaign on several occasions. The Quayle campaign was sufficiently concerned that Goodin planned to travel with Quayle on the day before the election to handle media inquiries in the event that the press published Kimberlin's claims. (Exhibit C, p. 4). Miller was in continuous contact with the Bush-Quayle campaign and with the BOP regarding Kimberlin, and defendants Miller and Quinlan were well aware of the campaign's concern. (Exhibit 2 to Exhibit A).

17. Although Miller initially denied discussing the attempted news conference with other Justice Department officials, he later conceded in response to questioning that he had discussed the matter with Robin Ross, the Executive Assistant to the Attorney General. (Exhibit 2 to Exhibit A; Exhibit C, p. 6).

18. Quinlan cancelled the scheduled group interview even though the local prison officials had determined that such a news conference was advisable and permissible, and even though the Associate Attorney General, Francis Keating II, one of Quinlan's superiors, had previously advised Quinlan that reporters should have access to Kimberlin. (Exhibit 2 to Exhibit A).

19. Pursuant to Quinlan's order, Benefiel announced to the news reporters who had gathered that the interview had been cancelled. In accordance with Quinlan's order, Benefiel falsely represented to the news reporters that the news conference had been cancelled due to "unforeseen developments." Benefiel informed the reporters that they could interview Kimberlin at a "later time" if they wished to do so. Despite this assurance, no such interviews were permitted prior to the election.

20. Responding to inquiries from Senator Joseph Biden, Quinlan falsely asserted that press conferences were contrary to the "Bureau's policy on media access." (Exhibit 1 to Exhibit A). The former General Counsel for BOP, in contrast, confirmed that inmate press conferences are not contrary to BOP policy and that they have been held in the past. (Exhibit 2 to Exhibit A).

21. The cancellation of the interview substantially heightened the press' interest in Kimberlin's claims. Defendants Quinlan and Miller determined that, because Kimberlin would continue to have access to telephonic communications with some of the interested news reporters, cancelling the news conference was insufficient to prevent further information concerning Kimberlin's allegations from reaching the press and being published. As a result of this concern, defendants Miller and Quinlan, acting under color of law in their official capacities, conspired to place Kimberlin into detention to prevent him from contacting media representatives. Once placed in detention, a prisoner is segregated from the general prison population and, as described below, is deprived of most inmate privileges. The detention cells are also used as disciplinary segregation cells for prisoners found guilty of prison rules.

22. Pursuant to defendants' scheme, on the evening of November 4, 1988, defendant Quinlan, with the aid and cooperation of defendant Miller and other officials of the Department of Justice, personally ordered that Kimberlin be placed into detention. (Exhibit B, p. 2). Defendants took this action for the specific purpose of wrongfully prohibiting him from freely exercising his constitutional First Amendment

right to speak with members of the press, and to retaliate against him for such attempts.

23. Pursuant to Quinlan's directive, approximately six guards arrived at Kimberlin's cell, forcibly pulled him from his cell, handcuffed his hands behind his back and marched him off to the detention unit. Kimberlin's arms were raised high behind his back, in a painful position, forcing him to slouch over as the guards led him to detention. Kimberlin was marched across the prison compound in frigid temperature, and was not given a coat to wear, though the guards each wore one. When Kimberlin arrived at the detention unit, he was strip-searched. This treatment was designed to retaliate against Kimberlin for exercising his First Amendment rights and to intimidate him from speaking with the press in the future.

24. No pre-detention hearing was held to determine whether Kimberlin should be placed into detention, and despite Kimberlin's repeated inquiries, no justification was given to him prior to his seizure as to the basis for this action. The guards' only response to Kimberlin's entreaties for an explanation was "you are going to the hole."

25. In a calculated effort to conceal their true motivations for causing Kimberlin to be placed into detention, defendants Quinlan and Miller knowingly concocted a false pretense to justify placing Kimberlin into detention. Quinlan and Miller falsely represented to the media and other federal officials that Kimberlin's safety was threatened and that this threat justified placing him into detention. In truth, neither Quinlan nor Miller believed that Kimberlin's safety in fact was threatened.

26. In furtherance of this effort to conceal defendants' true motivations for silencing Kimberlin, and to provide a false pretense to segregate him, defendant Miller contacted J.D. Williams, the South Central Regional Director of the Bureau of Prisons, on November 4, 1988, after the press conference had been cancelled. Miller falsely told Williams that a news reporter told Miller that Kimberlin feared for his safety from other inmates. This discussion occurred well after normal working hours. (Exhibit 4 to Exhibit A; Exhibit

B, p. 3). Miller's false statements regarding Kimberlin's safety formed the justification to place Kimberlin into detention. (Exhibit B, p. 3). Miller, however, did not believe that Kimberlin's safety was actually threatened. (Exhibit C, p. 4).

27. This communication between Miller and an employee of the Bureau of Prisons unconnected with public relations was unusual, if not improper, wholly apart from the falsity of Miller's statements. In response to an administrative claim filed by Kimberlin under the Federal Tort Claims Act (Exhibit A), the Bureau of Prisons asserted that Miller made these statements to the Bureau's public relations staff and that it was Quinlan who spoke with the Regional Director (Exhibit B, p. 3). Contemporaneous documentation, however, reveals that Miller contacted Williams directly. (Exhibit 4 to Exhibit A).

28. Although Miller claimed to BOP officials that a reporter told him that Kimberlin feared for his safety, the reporter has stated that it is "absolutely, categorically untrue" that she ever made such a comment to Miller. (Exhibit E). According to the reporter, "it was very clear to me they were looking for an excuse" to prevent Kimberlin from talking to reporters. (*Id.*)

29. As a further act to conceal the wrongful deprivation of Kimberlin's constitutional and personal rights, Quinlan knowingly misrepresented to Senator Biden that Kimberlin was placed into detention on November 4 for his protection (Exhibit 1 to Exhibit A).

30. Quinlan's personal involvement in ordering an inmate into detention was highly unusual and possibly unprecedented. Such determinations are generally made by local officials who are best able to determine whether detention is warranted, and are particularly better suited to determine whether an inmate's safety is threatened. John Pendleton, Congressional Liaison for the BOP, has stated that he cannot recall another instance in which the director made the decision to place an inmate into detention, and that "[i]t's usually handled at the warden level." (Exhibit 2 to Exhibit A).

31. Upon learning of the purported justification for his placement into detention, Kimberlin denied that he perceived any threat to his safety. Nonetheless, Kimberlin was placed in a detention cell.

32. Despite defendants' claims that Kimberlin was segregated for his protection, a written order governing the terms of his detention provided that he was not allowed to make telephone calls. This order was in violation of regulations promulgated by the Bureau of Prisons, 28 C.F.R. § 540.105 (1988), and was issued in furtherance of defendants' scheme to deprive Kimberlin of his First Amendment rights.

33. Defendants ultimately caused the local prison officials to demand that Kimberlin telephone a particular news reporter, because the reporter threatened Miller that she would publish Kimberlin's statements unless permitted to speak with him. Quinlan misleadingly portrayed this action to Senator Biden as indicating that Kimberlin was granted free access to the press. (Exhibit 1 to Exhibit A). Kimberlin was not authorized to make other telephone calls while segregated from the general prison population, even though the purported basis for defendants' actions was to protect him.

34. The BOP has now acknowledged that Kimberlin's safety was not threatened. (Exhibit B, p. 3).

THE SECOND DETENTION, ON NOVEMBER 7, 1988

35. On the evening of November 5, 1988, Kimberlin was temporarily released from detention after a reporter threatened Miller that she would broadcast Kimberlin's statements unless he were released.

36. Following his release, members of the press continued their attempts to contact Kimberlin regarding his claims about the vice-presidential candidate. Bureau of Prisons officials learned, through the systematic monitoring of plaintiff's telephone communications, that Kimberlin

intended to discuss his allegations regarding Senator Quayle with reporters over the telephone on the morning of November 7. (Exhibit B, pp. 3-4). A group of reporters planned to receive Kimberlin's telephone call in a hotel in Washington, D.C..

37. Because Kimberlin was planning to speak with members of the press over the telephone, he was again placed into segregation in the early morning of November 7, 1988, the day before the presidential election. In furtherance of defendants' scheme to silence Kimberlin in violation of his First Amendment rights and to prevent him from speaking with the press, El Reno FCI guards arrived again at Kimberlin's cell, seized him and hauled him into detention.

38. Quinlan admitted that he was kept informed of this action. (Exhibit 2 to Exhibit A). Miller is reported in the press to have stated that Quinlan ordered this second detention. According to the *New York Times*, "[Miller] said Mr. Kimberlin was *twice* placed in administrative detention *on the order of J. Michael Quinlan*, head of the Federal Bureau of Prisons." (Exhibit F) (emphasis added).

39. The guards provided no prior justification to Kimberlin for this action. The report filed on the date of this second detention provides only that Kimberlin was segregated because of an unspecified "investigation." Kimberlin was not provided prior notice of the charges against him, an opportunity to rebut those charges, or informed of the nature of the supposed "investigation" prior to being placed into detention.

40. In its response to Kimberlin's Federal Tort Claims Act administrative claim, the Bureau of Prisons acknowledges that Kimberlin was placed into detention on November 7 to prevent him from speaking with the reporters who gathered at the Washington, D.C. hotel. The letter from Carolyn Sabol, BOP Regional Counsel, confirms:

> On Monday, November 7, 1988, upon review of intelligence information, it was determined that Mr. Kimberlin was attempting to use the telephone to set up a press conference in

> Washington, D.C. that morning. As a result, Mr. Kimberlin was again placed in administrative detention, to avoid a violation of our rules and protect the integrity of institutional security.

(Exhibit B, pp. 3-4).

41. Nothing in the Bureau of Prisons regulations prohibits an inmate from speaking to a group of news reporters over the telephone. Such a regulation, if it did exist, would violate the First Amendment.

42. In an effort to conceal defendants' true motivations for placing Kimberlin into detention -- which the Bureau of Prisons now concedes was to prevent contact with the press -- prison officials invented a pretense for this second such action. In furtherance of defendants' scheme, these officials knowingly created a report that falsely stated that Kimberlin was being placed into detention because he made a "third-party call," that is, a call to one party who transfers it to a third. The purported violation does not carry detention as a permissible sanction.

43. In a further effort to conceal defendants' true motivation of secluding Kimberlin from the press, Quinlan falsely reported to Senator Biden that Kimberlin was placed into detention this second time because he allegedly made a third-party call, not because, as the Bureau of Prisons now concedes, he was attempting to speak with the press. Quinlan falsely wrote Senator Biden:

> [Kimberlin] was returned to administrative detention for disciplinary reasons. During this intervening period he had full access to the inmate telephone system and had the opportunity to contact the media if he desired. On Monday, however, Mr. Kimberlin had attempted to place a telephone call via a third party call forwarding system, in direct violation of inmate telephone regulations.

(Exhibit 1 to Exhibit A).

44. While Quinlan was claiming that Kimberlin was placed into detention this second time because he made a "third-party" call, Miller knew the true, and now admitted, reason: "The Bureau of Prisons caught on that he was going to hold another press conference, so they put him back in." (Exhibit 2 to Exhibit A).

45. While voters cast their ballots on November 8, 1988, Kimberlin languished in detention. Kimberlin was not released from detention until after the presidential election was completed, on November 14, 1988, when a local disciplinary hearing officer determined that the violation with which he was charged -- making a third-party call -- does not carry the sanction of disciplinary segregation.

46. For several weeks after Kimberlin was released from detention on November 14, 1988, he was not permitted to return to the preferred housing in which he previously was housed. Instead, he was placed in the "Oklahoma unit", which essentially is a warehouse of unusually cramped and exceptionally noisy cages in which the lights remain on at all times.

THE THIRD DETENTION, ON DECEMBER 22, 1988, AND CONTINUAL HARASSMENT

47. After Kimberlin was released from segregation on November 14, 1988, defendants caused prison officials at the El Reno FCI to conduct a campaign to demoralize and terrify Kimberlin. In furtherance of and to facilitate defendants' scheme to deprive Kimberlin of his First Amendment rights, Kimberlin was subjected to continuous harassment by prison officials at El Reno. These officials also threatened Kimberlin that they could return him to detention at a moment's notice.

48. In furtherance of defendants' scheme to prevent Kimberlin from exercising constitutional rights, and as a result of the campaign against Kimberlin which defendants caused to be set in motion, Kimberlin was again placed into

detention on or about December 22, 1988. Kimberlin again was forcibly seized and handcuffed, although he offered no resistance, and was taken to the detention cells.

49. Again, Kimberlin did not receive a predetention hearing or an opportunity to rebut the charges against him in connection with this third placement into detention.

50. Prison officials again attempted to justify this third placement with an allegation that Kimberlin had made another "third-party call", even though Bureau of Prisons regulations provide, and the disciplinary hearing officer had determined in connection with the previous such charge, that detention is not an authorized sanction for placing a third-party call. This asserted justification was false; the true reason for this action was to retaliate against Kimberlin for making claims regarding Senator Quayle and to prevent him from making such claims in the future.

51. On or about December 23, 1988, Kimberlin was released from detention, but he nonetheless lost his preferred housing privileges. The official who released him remarked that he might get into trouble for doing so, but that there was no justification for Kimberlin's continued detention. In January 1989, well after his release from detention, Kimberlin was found not guilty of misusing the telephone.

52. Through the course of and after the presidential election, defendants caused the systematic monitoring of Kimberlin's telephone calls for the improper purposes of controlling the content of his statements to members of the press and to provide Bush-Quayle campaign officials with information regarding the level of the press' interest in Kimberlin's statements.

53. Upon becoming aware of Kimberlin's statements and his contacts with interested news reporters, various officials of the Bureau of Prisons and Department of Justice caused a special investigative lieutenant to investigate and monitor Kimberlin's telephone calls using the prison's electronic telephone monitoring system. Not only were Kimberlin's

calls monitored as they were made, but this investigating official also began to listen to earlier recorded conversations.

54. Miller was kept informed of these officials' actions, and has acknowledged: "The fact is that, by that stage of the game, the prison authorities were monitoring all of Kimberlin's prodigious telephone traffic." (Exhibit C, p. 4).

55. Prison officials also monitored Kimberlin's privileged calls to his attorneys. Prison officials used one such call to his attorneys to place Kimberlin into detention on December 21, 1988.

56. The conditions of Kimberlin's confinements while in detention were egregious. On all three occasions, whether the purported justification for the segregation was to protect his safety or to investigate a violation of prison rules, Kimberlin was kept in the same types of cells and under the same conditions as inmates receiving punishment for violations of prison rules. Each time, Kimberlin was kept in a roach-infested, 4' x 6' cell for 24 hours each day, while permitted only brief exercise periods.

57. During his first detention on November 4, 1988, Kimberlin was placed into a tiny cell with an inmate in apparent need of medical care. During his second detention on November 7, 1988, Kimberlin was placed into a tiny cell with a seemingly suicidal inmate. During his third detention, Kimberlin was placed with an inmate who continually uttered bizarre and aggressive statements and who exhibited sexually deviant behavior. On each occasion, there were empty cells in the detention section in which Kimberlin could have been placed.

58. Each time Kimberlin was placed into detention, he was denied a substantial number of privileges available to the general inmate population, including access to the library, school, recreation, commissary, daily showers and other inmates. On some occasions, he was not permitted to call loved ones to inform them of his mistreatment. As a result of his detentions, Kimberlin missed time from his job and missed classes he was attending in pursuit of his college

degree. Also, Kimberlin lost personal property as a result of his detention.

59. As a result of being disciplined without justification, being muzzled in connection with his attempts to exercise basic First Amendment rights, and being subjected to harassment and unusual surveillance, Kimberlin also suffered humiliation, anxiety, fear and emotional distress.

60. By letter dated August 1, 1990, Representative Robert W. Kastenmeier, on behalf of the Subcommittee on Courts, Intellectual Property, and the Administration of Justice of the United States House of Representatives, has requested Quinlan to provide a "full explanation" of the circumstances of Kimberlin's confinements. (Exhibit G).

COUNT I

(FIRST AMENDMENT *BIVENS* CLAIMS AGAINST RESPONDENTS QUINLAN, INDIVIDUALLY, AND MILLER, INDIVIDUALLY)

61. Plaintiff repeats and incorporates by reference the allegations of paragraphs 1-60 as if fully set forth herein.

62. By causing Kimberlin to be placed into detention in order to prevent him from making his claims regarding Senator Quayle, and to retaliate against him as a result of those claims, the individual defendants, while acting under color of federal law, intentionally and wantonly violated plaintiff's right of freedom of speech guaranteed by the First Amendment of the Constitution of the United States.

63. By causing the continual harassment of Kimberlin, by stepping up surveillance of his activities, and by subjecting him to threats as a result of his statements regarding Senator Quayle, the individual defendants violated Kimberlin's First Amendment rights.

COUNT II

(FIFTH AMENDMENT *BIVENS* CLAIMS AGAINST RESPONDENTS QUINLAN, INDIVIDUALLY, AND MILLER, INDIVIDUALLY)

64. Plaintiff repeats and incorporates by reference the allegations of paragraphs 1-63 as if fully set forth herein.

65. The individual defendants while acting under color of federal law conspired to, and did, cause plaintiff Kimberlin to be intentionally and wrongfully placed into detention on two separate occasions in November 1988 and on one occasion in December 1988 without basis and for an improper and impermissible purpose. Such conduct on the part of the individual defendants intentionally and wantonly violated plaintiff's right to due process pursuant to the Fifth Amendment of the Constitution of the United States.

66. In addition, by causing Kimberlin to be placed into detention without affording him notice of the charges against him, and an opportunity to rebut those charges, defendants caused Kimberlin to be deprived of procedural due process rights guaranteed by the Fifth Amendment of the United States Constitution.

67. With respect to the November 4 detention described above, no predetention hearing was held to determine whether Kimberlin should be placed into detention, and despite his repeated inquiries, Kimberlin received no justification prior to being booked as to the basis for this action.

68. Similarly, with respect to the detentions commencing on November 7, 1988, and on December 21, 1988, Kimberlin was provided no predetention hearing, no opportunity to rebut the charges against him and no notice of the basis for being placed into detention prior to such action.

COUNT III

(FEDERAL TORT CLAIMS ACT CLAIMS FOR ASSAULT, BATTERY AND FALSE IMPRISONMENT AGAINST THE UNITED STATES OF AMERICA)

69. Plaintiff repeats and incorporates by reference the allegations of paragraphs 1-68 as if fully set forth herein.

70. On or about December 14, 1989, plaintiff filed with the Bureau of Prisons an administrative claim pursuant to the Federal Tort Claims Act, 28 U.S.C. § 2671 *et seq.*, seeking compensatory damages for tortious false imprisonment, assault and battery, resulting from his improper placements into detention. (Exhibit A). By letter dated June 19, 1990, Carolyn Sabol, Regional Counsel for the Bureau of Prisons, denied the claim in all respects. (Exhibit B). Six months has passed since plaintiff filed his administrative complaint. Consequently, plaintiff has exhausted his administrative remedies.

71. Kimberlin's placements into the segregation cells on November 4, 1988, November 7, 1988 and December 21, 1988, constituted in each instance the tort of false imprisonment committed and supervised by law enforcement officers of the United States Government, while acting within the scope of their employment. These law enforcement officers intended unlawfully to confine Kimberlin in administrative detention; and in fact did so confine him, resulting in substantial harm to Kimberlin.

72. Each time the El Reno FCI guards, supervised by Quinlan and other law enforcement officers of the United States, unlawfully seized Kimberlin and forced him to the segregation cells, those United States officials committed the torts of assault and battery against Kimberlin. Kimberlin was continuously subject to apprehension of imminent battery as a result of defendants' scheme to silence him and was subject to battery each time he was forcibly placed into detention. The actions of these guards resulted in substantial harm to Kimberlin.

COUNT IV

(CLAIMS FOR VIOLATION OF TITLE III OF THE OMNIBUS CRIME CONTROL AND SAFE STREETS ACT OF 1968, 18 U.S.C. § 2511, AGAINST RESPONDENTS QUINLAN, AS DIRECTOR OF THE BUREAU OF PRISONS, AND BUREAU OF PRISONS)

73. Plaintiff repeats and incorporates by reference the allegations of paragraphs 1-72 as if fully set forth herein.

74. By causing the interception, monitoring and use of Kimberlin's private telephonic communications, defendants Quinlan and the United States Bureau of Prisons have repeatedly violated Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. § 2511.

75. The interception, monitoring and use of Kimberlin's telephone calls described herein were done without his consent, express or implied, and for the sole purposes of facilitating and furthering defendants' scheme to silence, isolate and retaliate against Kimberlin as a result of his statements concerning the vice-presidential candidate. In addition, such monitoring was done for the improper purpose of supplying information to Bush-Quayle campaign officials regarding Kimberlin's statements and the level of media interest in such statements.

76. In addition, the conduct described herein constitutes violations of Bureau of Prisons regulations. Those regulations limit the permissible monitoring of prison inmate telephone calls to the extent necessary to "preserve the security and orderly management of the institution and to protect the public." 28 C.F.R. § 540.101.

77. Furthermore, the calls that were intercepted, monitored and used included privileged attorney-client communications with Kimberlin's attorneys. With respect to these calls, defendants have violated both the Omnibus Crime Control and Safe Streets Act of 1968 and Bureau of Prison regulation 28 C.F.R. § 540.101, which prohibits monitoring an inmate's call to his attorney.

WHEREFORE, plaintiff demands judgment:

1. Against the individual defendants on the First and Second Counts for compensatory damages and punitive damages in an amount to be determined at trial;

2. Against defendant United States of America on the Third Count for compensatory damages in an amount to be determined at trial;

3. Against defendants Quinlan, as the Director of the Bureau of Prisons, and the United States Bureau of Prisons on the Fourth Count for statutory damages as provided by 18 U.S.C. § 2520(2)(B) in an amount to be determined at trial;

4. Against all defendants for the costs, disbursements and attorneys' fees for this action;

5. For any further and different relief as this Court deems just and proper.

JURY DEMAND

Plaintiff demands trial by jury of all issues triable by jury.

Dated: August 15, 1990 Respectfully submitted,

/s/

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